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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Subcommittee
Thirty-second session
New York, 22 March-8 April 1993

Draft report of the Legal Subcommittee on the work of its thirty-second session

Addendum

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 4 (MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION)

1. On 22 March 1993, the Legal Subcommittee re-established its Working Group on agenda item 4.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-first session in 1992 (A/AC.105/514), which contained, in annex II, the report of the Chairman of the Working Group at the thirty-first session. It also had before it the report of the Scientific and Technical Subcommittee on the work of its thirtieth session in 1993 (A/AC.105/543), which considered, in chapter VI, inter alia, the subject of the "physical nature and technical attributes of the geostationary orbit".

3. The following documents submitted at previous sessions of the Legal Subcommittee and of the Committee on the Peaceful Uses of Outer Space were referred to in the course of the discussions: "Approach to the delimitation of airspace and outer space", submitted to the Subcommittee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/C.2/L.139); "Draft general principles governing the geostationary orbit", submitted to the Subcommittee at its twenty-third session by the delegations of Colombia, Ecuador, Indonesia and Kenya (A/AC.105/C.2/L.147); "Draft basic provisions of the General Assembly resolution on the delimitation

of airspace and outer space and on the legal status of the geostationary satellites' orbital space", submitted to the Committee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.112); "Compromise proposal on the question related to the definition and delimitation of outer space", submitted to the Committee at its thirtieth session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.168); "Questions concerning the legal regime for aerospace objects", submitted to the Subcommittee at its thirty-first session by the delegation of the Russian Federation; a "working non-paper" circulated at the Subcommittee's twenty-eighth session in 1989 (A/AC.105/430, annex II, para. 20); and a "working non-paper" circulated at the Subcommittee's thirtieth session in 1991 (A/AC.105/484, annex II, para. 12).

4. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that each aspect of the agenda item (namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other) should be discussed by the Working Group separately.

5. The views expressed in the discussion within the Working Group are summarized below.

Question of the definition and delimitation of outer space

6. At the request of a number of delegations, the delegation of the Russian Federation which had submitted, at the thirty-first session of the Subcommittee in 1992, a working paper entitled "Questions concerning the legal regime for aerospace objects" (A/AC.105/C.2/L.189), explained that the paper had been submitted as a starting-point and a stimulus for a discussion which might break the impasse in the debate between States which considered that delimitation of airspace and outer space was necessary, and States which considered that it was not. That delegation further explained that the views expressed in the paper were of a purely preliminary character, and that the list of questions contained in it was not exhaustive. In the view of that delegation, the international legal problems which might arise in connection with the future exploitation of aerospace systems would probably be rather complex, and therefore the input of all delegations to the debate on the Russian working paper was most welcome, even if certain comments were to contain criticism or alternative proposals.

7. Some delegations expressed the view that since the questions formulated in working paper A/AC.105/C.2/L.189 were directly relevant to aeronautical activities, it would be advisable to request the International Civil Aviation Organization (ICAO) to provide an opinion on the subject-matter of the paper, which opinion would be pertinent and helpful in the Subcommittee's work.

8. Some delegations expressed the view that, perhaps in addition to the above request addressed to ICAO, a questionnaire should be addressed to States Members of the United Nations requesting their views with regard to the questions contained in working paper A/AC.105/C.2/L.189, and that the information thus received would also be helpful for the debate.

9. The view was expressed that the approach suggested in working paper A/AC.105/C.2/L.189 might help to overcome various obstacles encountered so far in the discussion on the delimitation of airspace and outer space, and the discussion under this agenda item should eventually lead to the preparation of general principles governing the activities of States in the exploitation of aerospace systems.

10. The view was expressed that the approach advocated in working paper A/AC.105/C.2/L.189 would still require that the question of the delimitation of airspace and outer space be resolved, because the definition of "an aerospace object" in the paper was based on the object's potential to fly both in outer space and in airspace. In the view of that delegation, it would hardly be advisable to subject a flying object to different legal regimes merely because it crossed a certain imaginary line in the course of its flight. If such an approach were adopted, numerous legal difficulties would arise, concerning such areas as contractual rights, safety rules, the status of the aircraft commander and other areas which are now regulated under air law. In the view of that delegation, it might therefore be preferable to have, if one were needed at all, a single legal regime for aerospace objects.

11. Some delegations, having referred to relevant provisions of working paper A/AC.105/C.2/L.189, expressed the view that the question of the passage of an object, launched into outer space, through the airspace of foreign States would require further in-depth consideration.

12. The view was expressed that, in theory, an aerospace object may be subjected to a double regime based on the space - airspace or outer space - in which it flies, or to a single regime based on characterizing the object from a technical standpoint as either an aircraft or an outer space object. In the view of that delegation, the choice to be made with regard to this question would require further study.

13. The view was expressed that while there would be evident merits in having a single legal regime for aerospace objects, certain legal problems would continue to exist, in particular, the need to delimit airspace and outer space.

14. Some delegations expressed the view that the establishment of a legal framework for an activity involving the use of outer space should be preceded by the development of a relevant State practice, and that it would, therefore, be beneficial to have information concerning flights of aerospace objects already made, as well as concerning future programmes of such activities.

15. One delegation said that in order to make progress in dealing with the question of the definition and delimitation of outer space and as a follow-up to the ideas contained in the proposal put forward by the Russian Federation, it was necessary to initiate an in-depth discussion on those aspects on which the Legal Subcommittee could make recommendations to the Committee on the Peaceful Uses of Outer Space with a view to the drafting of general principles to govern those specific activities. Such a discussion would be without prejudice to the positions thus far taken by each delegation in dealing with the definition and delimitation of outer space. The same delegation suggested that some specific issues on which the Working Group could focus its discussions in future would be: (a) the launching of space vehicles and space objects and the period they

spend in airspace; (b) aerodynamic properties of space vehicles and space objects; (c) questions relating to lift-off and re-entry into earth orbit during flight; (d) flight regime for space vehicles depending on their location; (e) procedures and notifications; and (f) possible revision of the registration of aerospace objects.

16. At the third meeting of the Working Group, on 30 March, the Chairman circulated an informal paper entitled "Draft questionnaire concerning aerospace objects" (A/AC.105/C.2/1993/CRP.1). The paper is appended to the report of the Working Group. The Chairman explained that the paper had been prepared by him in consultation with a number of delegations and should be considered as a starting-point for preparing a questionnaire to be sent to Member States.

17. Some delegations, while welcoming the Chairman's initiative, expressed the view that the paper could be restructured to better serve its purpose. Those delegations suggested that the questions currently contained in the paper should be divided into two groups: legal questions and technical questions. They further suggested that the legal questions should be divided into two subgroups: one dealing with de lege lata problems, the other, with de lege ferenda problems.

18. Some delegations expressed the view that question 1 of the Chairman's working paper should be reformulated to deal first with the State practice with regard to passage of space objects through foreign airspace, then with opinio juris in this regard and finally with the existence of international customary law in this field.

19. Some delegations expressed the view that the eventual objective of the questionnaire was not quite clear and that more refinement of the document was needed. Those delegations believed that if any progress was to be achieved by following the suggested approach based on a questionnaire, extreme caution and care was needed.

20. The view was expressed that in questions 1 and 4 of the questionnaire, the term "space objects" should be replaced by "aerospace objects".

21. The view was expressed that there were two types of vehicles which could fall within the category of aerospace objects. The first category would include vehicles which passed through foreign airspace during launch or landing and which entered airspace from the outer space orbit and after that returned back to the orbit. The second category would include vehicles the main objective of which would be to provide transportation between two points on Earth while passing briefly through outer space. In the view of that delegation, the definition of an aerospace object suggested in working paper A/AC.105/C.2/L.189 was applicable to the first of the above two categories, and all vehicles belonging to that category were in fact universally considered space objects, although there was currently no agreed definition of the term "space object". That delegation believed that if the aerospace object under discussion fell within the first category, the various questions in the Chairman's draft questionnaire could be answered by regarding it as a space object, and it might become possible to determine whether there was a need to legally delimit airspace and outer space.

22. The view was expressed that while there existed a need to delimit and define outer space, the proposal to study aerospace systems had offered a way out of the stalemate reached on the delimitation question. The basic legal essence of aerospace systems is whether an object is identical with the medium of its transit. If so, what is the nature of the relationship of aerospace objects with outer space on the one hand and airspace on the other? Accordingly, a single legal regime approach based on the nature of objects does not seem to take satisfactorily into account the differences in the legal nature of airspace, which is subject to the sovereignty of the territorial State on the one hand, and the legal nature of outer space, which is open to the common use of all States on the other. Further, it was felt that the data required on aerospace systems relate to basic information which the sponsors and other States that launch such aerospace objects could provide. It was therefore stated that the idea of seeking the views of all States through the device of a questionnaire may not be useful at the current stage.

23. In summing up the discussion on the question of the definition and delimitation of outer space, the Chairman expressed the view that the debate had been characterized by a constructive and positive atmosphere which was conducive to achieving progress in the future.

Question of the geostationary orbit

24. At the commencement of the debate, the delegation of Colombia circulated a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192), which is set out in section __ of annex IV to the report of the Subcommittee. The sponsor of the paper explained that the document had been formulated in such a way as to take into account the suggestions of various delegations with regard to a "working non-paper" concerning the geostationary orbit. These suggestions had been expressed with regard to that "non-paper" at previous sessions of the Subcommittee and of the Working Group. The same delegation said that the document sought to develop legal principles, such as equity and efficacy, which were already norms of positive law in the treaties of the International Telecommunication Union (ITU) regulating the natural resource of the geostationary satellite orbit. It was also explained that the issue was to find a legal solution to situations in which two or more countries claimed the same orbital position or neighbouring orbital positions, the location of which gave rise to significant radio incompatibilities or operating restrictions, placing a country which did not have access to the orbit or a developing country at a disadvantage compared with a country which already did have access or a developed country. It was further explained that such a regime would apply especially to services (orbit-frequency) which had not been planned a priori.

25. The Working Group expressed its appreciation at the submission of working paper A/AC.105/C.2/L.192. Some delegations, while noting that they would need time to study the paper thoroughly, expressed the view that a debate on the basis of the document would be useful and might result in achieving progress in the work.

26. Some delegations believed that the views of ITU would be very pertinent and useful in connection with the consideration of the current item. In the view of those delegations, working contacts with ITU were needed to ensure that the

efforts of the Legal Subcommittee in the area under review would be consistent with the work of ITU with regard to the geostationary orbit.

27. In connection with working paper A/AC.105/C.2/L.192, the representative of ITU briefly described the legislative and treaty-making role of ITU with regard to the use of the geostationary orbit. He emphasized that the efforts of ITU in this field were aimed at guaranteeing efficient and equitable use of the geostationary orbit in accordance, in particular, with article 33 of the ITU Convention. He further expressed the hope that the work of the Legal Subcommittee concerning various aspects of the use of the geostationary orbit would be complementary to that of ITU and that there would be no prejudice to the role of ITU in this field.

28. Some delegations, while commending the submission of working paper A/AC.105/C.2/L.192, expressed the view that the Legal Subcommittee had no mandate to develop new legal principles which would lead to the establishment of a special legal regime referred to in paragraph 7 of the paper. Those delegations believed that ITU was quite successful in dealing with various aspects of the rational and equitable use of the geostationary orbit and that it was necessary to avoid any possible conflict of activities between ITU and other international bodies.

29. Other delegations expressed the view that the Legal Subcommittee had a mandate to deal with all aspects related to agenda item 4, without prejudice to the technical role of ITU; in this context, those delegations said that there was a need to establish a sui generis legal regime for regulating access to and the use of the geostationary orbit which took its special characteristics into account. Such a regime would have to guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries, including equatorial countries.

30. The view was expressed that the basic task of the Legal Subcommittee was to find new ways and means to ensure the rational and equitable use of the geostationary orbit, which, as was correctly noted in paragraph 5 of working paper A/AC.105/C.2/L.192, was a part of outer space. In the view of that delegation, it may be advisable to add to the existing provisions of the paper certain new elements concerning the need for exclusively peaceful uses of the orbit and the applicability of the law of outer space to it. That delegation believed that it was necessary to determine what legal gaps with regard to the geostationary orbit existed in the ITU legal regime, so that the Legal Subcommittee could fill those gaps without prejudice to the role of ITU. The same delegation further believed that, while paragraph 9 of the Colombian working paper dealt mainly with the resolution of potential conflicts which might arise in the use of the geostationary orbit, other aspects of the problem might be also addressed in this regard. For instance, there had to be an equitable relationship between the needs and interests of a developing country concerned and its share of utilization of the geostationary orbit. It was noted in this connection that a third category of States existed, apart from those that did not have access to the geostationary orbit on the one hand and those that had a crowded geostationary orbit on the other. Those were the States that had access to the geostationary orbit but in such a limited manner as to be insignificant compared to the needs and interests of such countries and the people. Those claims also merited to be duly reflected.

31. The view was expressed that there existed a close link between the use of the geostationary orbit as such and the use of radio-frequencies by the objects placed in the orbit. In the view of that delegation, the questions concerning the use of the geostationary orbit should be addressed in the context of the 1967 Outer Space Treaty, and the Legal Subcommittee should exercise extreme caution in its work so as not to affect adversely the role of ITU.

32. Some delegations expressed the view that both the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee had a mandate to consider questions relating to the use of the geostationary orbit with a view to elaborating general legal principles on this question. This work should be complementary to the activities of ITU, should be closely linked to them and should be without prejudice to the role of ITU. In the view of those delegations, the reference to the 1967 Outer Space Treaty contained in paragraph 3 of working paper A/AC.105/C.2/L.192 was very important, since the use of the geostationary orbit should definitely be for the benefit of all mankind.

33. In reply to a number of statements made during the debate, the delegation of Colombia explained that the objective of the Subcommittee's work with regard to the geostationary orbit should be the elaboration of legal principles, which objective was fully consistent with the mandate of the Subcommittee. That objective was also entirely compatible with the activities of ITU, the role of which was several times emphasized in various provisions of working paper A/AC.105/C.2/L.192. Similarly, the significance of the 1967 Outer Space Treaty was also emphasized in the document. In the view of that delegation, the question concerning positions on the geostationary orbit and the question of the use of radio-frequencies were closely linked and should be dealt with together in order to find a legal solution for achieving effective, rational and equitable use of the orbit taking into account the needs of developing countries and the necessity to establish certain preferential rights for dealing with specific situations arising from the practical use of the geostationary orbit.

34. The view was expressed that the suggestions put forward in working paper A/AC.105/C.2/L.192 were closely linked with the ideas expressed in a "working non-paper" circulated at the Subcommittee's twenty-eighth session, in 1989, by a number of countries from the Group of 77. In the view of that delegation, the approach suggested by the delegation of Colombia constituted a good basis for future discussion and for reaching, in the future, a consensus solution of the problem of the geostationary orbit.

35. Some delegations expressed the view that, in considering various questions concerning the use of the geostationary orbit, the question of the removal of space debris from the orbit should be addressed.

36. In this connection, a number of delegations drew attention to the threat posed by space debris in the geostationary orbit. It was therefore suggested that consideration be given to the desirability of an international agreement dealing specifically with the question of space debris. That would require resolving a number of legal issues such as, inter alia, the definition of space debris, jurisdiction and control over such debris and responsibility for damage caused by space debris.

37. The view was expressed that certain provisions contained in working paper A/AC.105/C.2/L.192 reflected a number of general understandings of perhaps all delegations to the effect, in particular, that the geostationary orbit formed an integral part of outer space and was subject to all provisions of the 1967 Outer Space Treaty, that the placing of objects in the geostationary orbit did not create any property rights to the positions occupied by those objects, and that claims of preferential rights with regard to certain segments of the geostationary orbit would contradict the principle of effectiveness in the use of the geostationary orbit established by ITU. In the view of that delegation, it might be useful to compare relevant documents of ITU with the corresponding provisions of working paper A/AC.105/C.2/L.192. That delegation believed that a step-by-step approach in dealing with the question of the geostationary orbit would be a most appropriate procedure, and that, therefore, a general discussion in this regard would be quite appropriate. The same delegation further believed that it might be premature at the current stage of the debate to discuss the form of the future document dealing with the geostationary orbit.

38. In summing up the discussion on the question of the geostationary orbit, the Chairman expressed the view that the preliminary exchange of views which had taken place on the basis of working paper A/AC.105/C.2/L.192 was very interesting, and provided a good basis for future work.